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China's ascent in global trade governance: from rule taker to rule shaker and, maybe rule maker?

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Since China's accession to the World Trade Organization (WTO) in late 2001, one of the most intriguing questions for trade analysts has been how the 'new kid on the block' would behave once it became a formal Member of the multilateral trading system. The question is twofold. First, will China faithfully implement its WTO accession commitments? Second, will China seek to upset the existing power structure in the WTO?

Of the two issues, the first has received the most attention. In addition to abundant media coverage, official statements and academic commentaries, the concern is well illustrated by the following passages from the Working Party Report of China's WTO Accession (WTO 2001a: para. 9):

> Some members of the Working Party indicated that *because of the significant size, rapid growth and transitional nature of the Chinese economy, a pragmatic approach should be taken in determining China's need for recourse to transitional periods and other special provisions in the WTO Agreement available to developing country WTO Members*. Each agreement and China's situation should be carefully considered and specifically addressed. In this regard it was stressed that this pragmatic approach would be tailored to fit the specific cases of China's accession in a few areas, which were reflected in the relevant provisions set forth in China's Draft Protocol and Working Party Report. Noting the preceding statements, Members reiterated that *all commitments taken by China in her accession process were solely those of China and would prejudice neither existing rights and obligations of Members under the WTO*

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Agreement nor on-going and future WTO negotiations and any other process of accession …

(Emphasis, in italics, added)

As a precaution against potential problems post-accession, the accession package includes many special rules tailor-made for China. These include substantive obligations such as the grant of national treatment to foreign persons and firms, as well as foreign products (while the normal WTO national treatment obligation applies to products only) (WTO 2001b: section 3). It also includes the commitment to treat subsidies provided to state-owned enterprises as specific subsidies (which otherwise would not be deemed illegal under the normal WTO rules on subsidies) (WTO 2001b: section 10.2). There are also procedural obligations, such as the establishment of a Transitional Review Mechanism for China in addition to the normal Trade Policy Review cycle for WTO Members (WTO 2001b: section 18), and the requirement to translate all foreign trade laws and regulations into one of the official languages of the WTO beyond the normal WTO transparency requirement (WTO 2001a: para. 334).

Moreover, concerns that China might fall short of its WTO obligations have been shared not only among WTO Memberships as a whole but have been a particular concern for the most powerful player in the WTO: the United States. For example, in the US–China Relations Act of 2000, which was enacted by the US government to grant China Permanent Normal Trade Relationship (PNTR) ahead of China's accession to the WTO, the US noted the following:[1]

> The record of the People's Republic of China in implementing trade-related commitments has been mixed. While the People's Republic of China has generally met the requirements of the 1992 market access memorandum of understanding and the 1992 and 1995 agreements on intellectual property rights protection, other measures remain in place or have been put into place which tend to diminish the benefit to United States businesses, farmers, and workers from the People's Republic of China's implementation of those earlier commitments.[2]

In light of these concerns, the US government established a complex mechanism under the same Act to monitor 'compliance by China with its commitments under the WTO' involving the Departments of Commerce,

[1] US–China Relations Act of 2000.
[2] Ibid, para. 6901 (10).

State and Agriculture, as well as the United States Trade Representative (USTR).[3]

In the view of the author, however, the second issue, while relatively neglected, is more important. At the end of the day, the first issue is only about the market access commitments made by a particular WTO Member. No matter how important the underlying commercial interests or the market of the Member might be, the implementation of such commitments is still unlikely to have a major impact on the institutional foundations of the multilateral trading system as a whole. In contrast, if China were to take an uncooperative approach in the WTO, this could well affect the smooth functioning or even viability of the multilateral trading system. Will China, a long-time outsider to the international system, be a 'good citizen' in the WTO, an institution that has evolved from a club-like group into an organization with great diversity and vast differences among its Members? Here again, the opinions are divided. In the lead-up to China's accession, some commentators believed that China could weaken both the WTO dispute settlement system[4] and the decision-making process,[5] while others countered that, judging by China's relatively uneventful track record in the United Nations (UN) and other international organizations that it has participated in, China's entry to the WTO would not be so disruptive to the status quo (Abbott 1998; Feinerman 1995; Lardy 1996, 1999, 2002).

As China enters its tenth year of WTO Membership, has the dragon brought a 'reign of fire' to the multilateral trading system and rocked its institutional foundations? This chapter will answer this question by reviewing China's participation in two key activities of the WTO – i.e. trade negotiations and dispute settlement – as well as another important component of global trade governance: regional trade agreements (RTAs). I will argue that, overall, China has evolved from a passive 'taker' of the existing rules to a country that will 'shake' the rules for its own interests or even 'make' new rules. At the same time, the pace of China's ascent has been uneven in different areas. The most aggressive strategy

[3] Ibid, paras. 6943 and 6951.

[4] For views that China's accession will overburden the WTO dispute settlement system, see Ostry (1998: 9, 2003: 263).

[5] For views that China's accession will weaken the effectiveness of the WTO decision-making mechanism, see e.g. Steinberg (1999). According to Steinberg, the unique political-economic system of China and the sheer size of its economy will cause 'political frictions' in the WTO upon its accession. However, due to its ineffective consensus decision-making process, it is unlikely that the WTO will be able to adopt new rules to deal with such problems. This will in turn further weaken the WTO decision-making mechanism.

has been apparent in RTA negotiations, where China has been on a frantic shopping spree since its accession to the WTO. Similarly, while China was initially reluctant to use the multilateral dispute settlement system, it has become a major player since 2007. In terms of multilateral trade negotiations, China has sent mixed signals: while it has made many submissions on negotiating issues in the Doha Round of WTO negotiations, China has so far successfully resisted calls from the United States (USA) and the European Union (EU) for it to play a leading role in the long-stalled trade talks. After exploring the reasons for varying behavioural patterns in a range of areas, this chapter concludes by exploring China's future role in the WTO, as well as the potential ramifications of China's ascent in global trade governance.

1 Multilateral trade negotiations

As the world's third-largest economy (in terms of nominal GDP) and trader (World Bank 2010c; WTO 2009a), China has considerable economic clout. The growing economic muscle of China has been gradually translated into elevated standings in key international institutions. While China has been a permanent Member of the UN Security Council ever since it resumed its UN Membership in 1971, it only recently gained more voting rights in both the International Monetary Fund (IMF) and the World Bank (BBC 2006; World Bank 2010a, 2010b; Xinhuanet 2010). However, the transition seems yet to happen at the WTO, where many key players keep complaining about China's alleged 'back-seat' role. Indeed, as recently as early 2008, both the USA and the EU were still reportedly frustrated over China's passive approach to the Doha Round of negotiations and the WTO's management more broadly (Otteman 2008). Even senior Chinese officials openly acknowledge this. For example, in late 2006, Dr Zhang Xiangchen, then Director-General of the Department of WTO Affairs of the Ministry of Commerce of the People's Republic of China (MOFCOM) and the current Deputy Permanent Representative of China's WTO Mission, conceded in an interview that China is only playing a 'preliminary constructive role'.[6]

[6] See Beijing Youth Daily, Shangwubu Shimao Zuzhi Si Sizhang Tan Rushi: Cheng Shimao Tixi Yifenzi (Director-General of Department of WTO Affairs on China's WTO Accession: Becoming Part of the WTO System). Available at http://finance.people.com.cn/GB/70392/5146335.html [accessed in November 2010].

While China has indeed taken a low-profile approach, this does not necessarily mean that China has made no contribution to the Doha Round. In fact, judging from the number of negotiating proposals submitted since the launch of the Round, China is one of the most active WTO Members in the negotiations. According to a study based on the official records of the WTO in 2003, China made a total of twenty-nine written submissions to the Trade Negotiations Committee and its subsidiary bodies, the Ministerial Conference at Doha, and the working groups on the four Singapore issues. On this measure, China is the most active developing country participant and the fourth most active among all WTO Members in the Doha Round (Nordström 2002: 28–30). As of July 2008, China has submitted more than one hundred proposals in the Doha Development Agenda (DDA) (Zhang 2008). These proposals are quite comprehensive and cover virtually all issues in the DDA, ranging from agriculture and non-agricultural market access (NAMA) to rules and services.

Given such active participation in the actual negotiation process, why then did China choose to take a low profile in public? In the author's view, the reasons include the following, elaborated in the forthcoming text.

1.1 The 'Recently Acceded Member' argument

Having been under the spotlight for fifteen years in one of the longest accession negotiations[7] in the history of the General Agreement on Tariffs and Trade (GATT)/WTO, the first explanation for China's low profile in public in the DDA is that the Chinese government wanted some quiet breathing space to digest and implement its heavy accession commitments. Indeed, China's concessions on both trade in goods and services greatly exceeded those of other WTO Members, most of which have not changed since the conclusion of the Uruguay Round. As argued by Shi Miaomiao, Deputy Director-General of the Department of WTO Affairs of MOFCOM (M. Shi 2005: 28–9):

> In terms of industrial products, if applying the Uruguay Round modality for tariff-reduction, China would only be required to reduce its tariff from a base point of 42.7% to the final bound tariff of 32.4% in year 2004, with an average reduction by 24.1%. According to its accession commitments,

[7] China's dubious honour of being the WTO Member with the longest accession process has been overtaken by Russia, which is in its seventeenth year of accession negotiation as of 2010.

> however, China's tariff reduction level is much greater. In 2004, China's average tariff rate on industrial products was reduced to 9.5%. After China's fulfillment of its commitments on accession into WTO, it has reduced its tariff rate by as much as 78.9%, which is much bigger than the 33% tariff reduction commitment made by other countries during the Uruguay Round. Moreover, even if the new round of Doha negotiation concludes with a reduction rate of as much as 68.5%, the total tariff cut of China would still exceed the total tariff cut of other countries during the Uruguay Round and Doha Round combined.
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> …
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> In terms of agriculture products, if applying the Uruguay Round modality for tariff-reduction, China would only be required to reduce its tariff from the base point of 54% to a final bound tariff of 37.9%. Instead, during its WTO Accession negotiations, China made greater concessions on reduction of agricultural tariffs. Pursuant to China's commitments, the agricultural tariff fell in 2002 to 18.5%, in 2004 to 15.6%, and by the year 2008 it will be further reduced to 15.1%. Such reductions would amount to an overall tariff reduction rate by 67.1%, which far exceeds the concession made by other members (36% for the developed Members, and 24% for the developing Members). Even if the new Doha Round concludes with a reduction rate on agricultural products of as high as 48%, the total tariff cut of China would still exceed the total tariff cut of other countries during the Uruguay and Doha Round combined.

Independent experts affirm this view. For example, Mattoo notes that China's services commitments are generally higher than other WTO Members in terms of both the width of coverage and the depth of market-opening. Indeed, he praises China's commitments under the General Agreement on Trade in Services (GATS) as 'the most radical services reform program negotiated in the WTO' (Mattoo 2003: 300). This observation is shared by Lardy, who noted in his study of China's accession package that the country's commitments 'far surpass those made by founding members of the WTO and, in some cases, go beyond those made by countries that have joined the organization since its founding in 1995' (Lardy 2002: 104–5).

Because of its substantial accession commitments, China has been arguing that it, along with other 'Recently Acceded Members' (RAMs), should not be required to make the same level of concessions as the founding WTO Members (WTO 2003).

To be fair, many WTO Members were initially sympathetic to the call for special treatment for RAMs. For this reason, the Hong Kong Ministerial Declaration explicitly states that '[w]e recognize the special situation of recently-acceded Members who have undertaken extensive market access

commitments at the time of accession. This situation will be taken into account in the negotiations' (WTO 2005: para. 58). Indeed, had the DDA been concluded according to the original schedule, it is not unlikely that China could have avoided making substantial concessions on agriculture or NAMA by hiding under the 'RAM' label. Unfortunately, however, as the Doha Round drags on, fewer Members are willing to give a 'free ride' to Members such as China that acceded a decade ago.

Moreover, the USA and the EU face increasing pressures: on the one hand, their negotiating partners ask them to make more concessions; on the other hand, vocal domestic constituencies (such as labour and farmers' groups) have been calling for the government to seek more inroads into foreign markets while avoiding having to provide access to their own domestic markets. Thus, they need to find another scapegoat to divert part of the attention. What could be a better target than China – the economic superpower on rapid rise? Thus, since 2006, the USA and the EU have been pushing China from both sides. For example, the USA has repeatedly urged China, as the biggest beneficiary of the multilateral trading system, to take more responsibilities at the WTO (Schwab 2006). Similarly, the EU has argued that China should be required to make contributions just like other WTO Members (Khor 2007). While the USA and EU use ambiguous terms such as 'leadership' to describe such 'responsibilities' and 'contributions', a careful reading between the lines of their messages reveals that what the USA and the EU really have in mind is asking China to provide more concessions in key areas such as agriculture, NAMA and services so that they can have a better report card to show to their domestic stakeholders.

While China fought hard to avoid making new concessions by being recognized as a RAM, it seems that it has lost the battle. According to the latest negotiating drafts, the prevailing consensus seems to be that flexibility will be extended mostly to small, low-income RAMs and 'very recently acceded Members', i.e. those that acceded to the WTO after the Doha Round was launched.

1.2 Lack of expertise

Even if China wishes to participate more fully in the WTO, as a new Member China lacks familiarity with the rules of the game and cannot participate effectively. This is the case for both substantive WTO rules as well as for procedural rules.

Regarding substantive rules, while the most important of them have been compiled in the Secretariat publication, *The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations* (WTO 1999), there are also numerous GATT protocols, decisions and other legal instruments that are not available in a readily accessible format (WTO 1994: Article 1(a)–(c)). Moreover, as noted by the Appellate Body in *Japan – Alcoholic Beverages II*, there are many panel reports adopted during the GATT era, which, as 'an important part of the GATT acquis … create legitimate expectations among WTO Members, and, therefore, should be taken into account where they are relevant to any dispute' (WTO 1996: 18). In addition, in line with the tradition of 'constructive ambiguity', many WTO rules are drafted in such a way that they are difficult to interpret for any Member, let alone newer ones. This is especially the case for rules that provide for flexibilities, which are often too technical for developing countries to master, as Deere demonstrated in her excellent study on the use of flexibilities in the Trade-related Aspects of Intellectual Property Right (TRIPS) agreement (Deere 2009). For new Members in particular, it is a major challenge to grasp these legal rules.

Compared with substantive rules, the procedural rules of the WTO are even more difficult for new Members to decipher. While Articles 9 and 10 of the Marrakesh Agreement Establishing the WTO (WTO Agreement) provide a set of elaborate rules for voting requirements for various decisions, formal voting has been rare in the history of the GATT and WTO.[8] In practice, most if not all decisions are made by 'consensus'. What is 'consensus' then? According to the footnote to Article 9.1 of the WTO Agreement, consensus is defined as the situation where 'no Member, present at the meeting when the decision is taken, formally objects to the proposed decision'. However, such cryptic explanation offers little help to the uninitiated. Ironically, that is probably the reason why the consensus rule is preferred over the clearly defined and easily understood rules, such as two-thirds or three-quarters majority. To make it even more hopeless, even the consensus rule itself is of little use in reality as it applies to decision-making in formal meetings, which unfortunately is not where most decisions are made at the WTO. As acknowledged by the WTO Secretariat, '[i]mportant breakthroughs are rarely made in formal meetings of [WTO] bodies, least of all in the higher level councils. Since decisions are made by consensus, without voting, informal consultations

[8] For a review of the problems with the GATT/WTO decision-making rules, see Ehlermann and Ehring (2005).

within the WTO play a vital role in bringing a vastly diverse membership round to an agreement'.[9] Thus, the only way to acquire essential negotiating skills such as agenda-setting and coalition-building is through actual participation in the real work of the WTO. Unfortunately, as China did not join the WTO as a formal Member until six years after the WTO was formed, it faced a rather steep learning curve.

In this regard, the thirty years of experience China had already acquired as a Member of the UN at the time it joined the WTO were not of much help either, for two reasons. First, the nature of trade negotiations is very different from the political grandstanding at the UN. As one WTO official observed: 'The UN is a talk-shop; the WTO is for getting real business done.'[10] Second, at the UN, China has been a Member of its key decision-making body – the Security Council – from the very beginning. In contrast, there is no such formal institutional arrangement at the WTO. Also, the key players in the global trade arena have been rather reluctant to grant China a seat at the table of the informal negotiating groupings for fear of diluting their own power.[11] While China has substantial trade volume, this by itself has not guaranteed China a position as a key player in WTO negotiations.

Given the substantial obstacles China has faced since its accession to the WTO, its performance in trade negotiations to date has been quite satisfactory. While no indicator can accurately quantify a country's negotiating prowess, the number of submissions made in the negotiations can serve as a useful proxy (Nordström 2002: 12). China did not make any submission in the Doha Round until 20 June 2002, when it made a proposal on fisheries subsidies.[12] By February 2005, China made more than ten submissions (G. Shi 2005: 21). The number jumped to sixty-seven by December 2007. By the time of the July 2008 meeting, China had made more than one hundred submissions concerning the Doha Round.

[9] WTO. *Understanding The WTO: The Organization, Whose WTO is it Anyway?* Available at www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm#top [accessed in November 2010].

[10] The author's interview with a senior WTO diplomat.

[11] As I will note below, due to China's unique position as both a developing country and a major trader, neither the developed countries nor the major developing countries regard China as one of their own and both view China more as a threat rather than a potential ally.

[12] Ministry of Commerce of China, 'Zhongguo Canyu Duoha Huihe Tanpan Dashiji (Major Milestones in China's Participation in Doha Round Negotiations'. Available at http://cwto.mofcom.gov.cn/aarticle/c/200910/20091006574682.html?1126026260=872534836 [accessed in November 2010].

Judging from the rapidly increasing number of submissions, China has been learning very fast.

1.3 The mismatch between the China-specific provisions and the normal WTO framework

In addition to the extensive market access commitments in both goods and services, China also reluctantly accepted many discriminatory clauses that are tailor-made for itself as part of its accession agreement. By their nature, these China-specific provisions are beyond the normal WTO framework. Thus, even if China acquired expertise in normal WTO negotiations, this would not solve the main problems facing China.

These provisions can be further divided into two categories: WTO-plus obligations, i.e. obligations that are beyond those normally required of WTO Members; and WTO-minus rights, i.e. rights that are less than those usually enjoyed by WTO Members.

The WTO-plus obligations include, for example:[13]

- The obligation to translate all foreign trade laws into one of the official languages of the WTO, while the normal transparency obligation in the WTO agreements only requires Members to publish trade laws and regulations in their own national languages (GATT Article X).
- A special transitional review mechanism. Under this mechanism, China shall be reviewed annually by the WTO since its accession. There will be a total of nine such reviews, with the first to the eighth of such reviews conducted every year after 2001 and a final review no later than the tenth anniversary after China's accession. This obligation is in addition to the normal periodic review as mandated by the Agreement on Trade Policy Review Mechanism (TPRM), under which China would only need to be reviewed once every four years at the time of its accession.[14]
- The obligation to provide national treatment to both foreign products and persons, while the WTO national treatment clauses only cover measures applicable to products.

[13] For a detailed discussion of the WTO-plus obligations, see Qin 2003.

[14] Section C of the Trade Policy Review Mechanism, Annex 3 to the Agreement Establishing the World Trade Organization. Available at www.wto.org/english/docs_e/legal_e/legal_e.htm#annex3 [accessed in November 2010]. The frequency of review is determined according to the trade share of the Member under review. At the time of its accession, China was the sixth-largest trader in the world. With its growing trade share, China is now reviewed on a biennial basis.

As to the WTO-minus rights, they include the following:[15]

- Designation of China as a 'non-market economy' in anti-dumping investigations for the first fifteen years after its accession, which makes it easier for investigating authorities to find the existence of dumping.
- The inclusion of an 'alternative benchmark' methodology in subsidy and countervailing measures (SCM) investigations, which also creates biases in favour of a positive finding on subsidies, all else being equal.
- A special textile safeguard mechanism (until the end of 2008), and a transitional product-specific safeguard mechanism (until the end of 2013). Both safeguard mechanisms considerably lowered the substantive and procedural safeguards in GATT Article XIX and the Safeguards Agreement, making it much easier for other countries to invoke safeguard measures against China while at the same time making it more difficult for China to challenge such measures.

As these provisions were specifically designed to soften the impact of China's WTO accession on other Members, they have a much more direct impact on Chinese exports than WTO rules applicable to other Members, at least during the transitional period. While the exact relationship between China's special provisions and the normal WTO rules is still subject to debate,[16] most commentators would agree that the China-specific provisions would take precedence pursuant to the principle of *lex specialis derogat legi generali* (a special rule prevails over a general rule). Thus, at least until 2017 – i.e. before the expiration of these China-specific provisions – China would regard the revision of these special provisions as a task more urgent than the revision of the general WTO rules. Unfortunately, revising the China-specific accession provisions through the WTO negotiations will be extremely hard, if not impossible. To start with, the WTO is ill-equipped for this task. Among the WTO Agreements, none contain explicit rules on how to revise the accession protocol. In practice, other than a few isolated cases of minor revisions of accession commitments,[17] there has been no precedent of comprehensive

[15] For a detailed discussion of the WTO-minus rights, see Gao 2007a.

[16] For the legal problems raised by these provisions, see Gao 2007a: 56–7.

[17] For example, when Mongolia acceded to the WTO in 1997, it committed to phase out and eliminate its export duty on raw cashmere within ten years. Due to both economic and environmental concerns, however, Mongolia found itself unable to eliminate the export duty. It requested the Council for Trade in Goods (CTG) for a five-year waiver on its accession commitment on cashmere, which was approved by the CTG on 9 July 2007. Available at www.wto.org/english/news_e/news07_e/good_counc_9july07_e.htm [accessed in November 2010]. The background of this case can be found in Tsogtbaatar 2005.

revisions of accession terms for particular countries. Thus, if China were to insist on revising its accession provisions, the default consensus rule would probably apply. As we have seen from the history of the WTO, consensus among all WTO Members is extremely hard to come by; indeed, it is one of the reasons why the Doha Round is taking so long. More importantly, most other WTO Members are not interested in the idea of revising China's terms of accessions. Furthermore, even if assuming, *arguendo*, that China could somehow persuade other Members to accept its request to revise its accession commitments, it probably will have to provide compensation to other Members as per the current rules on the renegotiation and modification of schedules.[18] Such compensation will have to take the form of additional concessions to other Members beyond the commitments China made upon accession. However, as I explained earlier, it is very unlikely that China will be willing to provide such additional concessions. As will be elaborated below, this factor also partly explains why China chose to take a relatively high profile in WTO disputes and RTA negotiations.

Against this context, the recent calls by the USA and the EU for China to shoulder more responsibility and make more concessions in the Doha Round are rather ironic. On the one hand, the USA and the EU imposed harsh conditions on China in the accession negotiations and effectively denied China the normal Membership status.[19] Yet, on the other hand, the USA and the EU now want China to behave like a 'normal' WTO Member, or even to go beyond what normal WTO Members would offer by taking up 'leadership responsibility'. Until the USA and the EU abandon such double standards and instead treat China on a non-discriminatory basis, why should China be expected to contribute to the Round above and beyond what is expected of a normal Member? Indeed, as eloquently explained by Sun Zhenyu, China's Ambassador to the WTO, China has made more contributions to the Round than even major developed countries. According to Sun's statement at the Informal Trade Negotiations Committee Meeting held on 11 August 2008, which is a kind of post-mortem session after the failure of the Members to reach major breakthrough during the previous week:

[18] See e.g. GATT Article 28 and GATS Article 21.

[19] As noted by Cattaneo and Braga (2009) in their comprehensive study on WTO accessions, while many other WTO Members that acceded to the WTO recently were also asked to assume obligations beyond the normal WTO disciplines, none of them are as onerous as those imposed on China, which remain a 'particularly challenging and atypical case'.

> We have tried very hard to contribute to the success of the Round. It is a little bit surprising that at this time the US started this finger pointing. I am surprised because they are now talking about cotton, sugar, rice of China as seems that we are not going to make any efforts in the Round. Let me explain what China has contributed in the round.
>
> Because of our accession negotiations, our tariff in agriculture on average is 15.2% and now bound at this level, which is lower than the average of European Union, lower than Canada, lower than Japan, lower than quite a number of other developed countries on average. But on that basis, we are committed in this round to cut further down our tariffs, the applied tariffs deeply. And in NAMA, our average is 9%, bound at that level. And in this round, we will cut about 30% in applied level. So we are making contributions of 50% of the total developing countries in terms of applied rate cut.
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> …
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> If you consider what the contributions that developed countries are going to make, in OTDS (Overall Trade-Distorting Domestic Support) the US is spending $7 to 8 billion this year or last year, maybe a little bit more to 10 billion, but they are offering $14.5 billion with a lot of policy space for themselves. And in their tariff cut in agriculture, they are protecting their sensitivities through sensitive products while they are saying 'well even if we have sensitive products for 5 or 4% of our tariff lines, we will have TRQ (Tariff Rate Quota) expansions'. But they can never expand their TRQ to the level of China's TRQ quantities. In our case, our TRQ is 9 million tons for wheat, 7 million tons for corn, 5 million tons for rice. How about your quota, even after the expansion they will never pass half a million tons. Where is the new market access to the developed countries?
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> (Sun 2008)

1.4 Awkward position on other issues

Among the diversity of WTO Members, China is notable for not only the size of its economy but also its multifaceted interests. This in turn results in different or even conflicting demands in the formulation of its trade policy. Here are two examples of such conflicts.

The first is the conflict between China's self-designated political position as a developing country and its economic standing as a major trader. For political reasons, China has always labelled itself as a developing country and joined several major developing country groups in the WTO, such as the G20.[20] On the other hand, however, the fact remains

[20] The G20 is a coalition of developing countries pressing for ambitious reforms of agriculture in developed countries with some flexibility for developing countries (not to be

that China is one of the most important traders in the world along with major developed countries such as the USA, the EU and Japan. Thus, on many issues, China's true interests actually lie closer to those of developed countries rather than those of developing countries. Take agriculture, for example. One of the major demands of developing countries is the elimination of export subsidies and reduction of domestic support. However, as one of the largest importers of many agricultural commodities, such as wheat, cotton and soya beans, China would probably find itself becoming the primary victim of the hike in world commodity prices that would accompany the end of subsidies by developed countries. Also, in the area of NAMA, major developed countries have been pressing developing countries to reduce tariffs. As the 'factory of the world', China stands to gain tremendously from the reduction of industrial tariffs. However, China finds it politically difficult to request that developing countries lower their tariffs on industrial goods. Another example is trade facilitation. While many developing countries argued against inclusion of this issue in the Doha negotiating agenda – particularly early in the Round – China's position as one of the top exporters in the world gives it a strong incentive to push for the inclusion of trade facilitation in the WTO framework, thereby making the customs process more efficient and cheaper. On all of these issues, due to the difference between China's political position and economic interests, it would be politically awkward for China to openly deviate from the developing country 'party line'. Thus, the best strategy seems to be to keep a low profile.

The second conflict is in the area of the WTO's rules related to trade remedies, where China is both the biggest victim and a major user. Take anti-dumping measures, for example. China has been the favourite target of anti-dumping investigations and actions for many years. According to a study by Bown, from 1995 to 2008 China was subject to 295 new anti-dumping measures, which was double that against Korea – the second most frequent anti-dumping target (Bown 2009: 82). Bearing in mind that Bown's figure for China only starts from its WTO accession while the numbers for other countries date back to 1995, the contrast is even more

confused with the G20 group of finance ministers and central bank governors, and its recent summit meetings). It currently has twenty-three Members: Argentina, Bolivarian Republic of Venezuela, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay and Zimbabwe. See www.wto.org/english/tratop_e/agric_e/negoti_groups_e.htm [accessed in November 2010].

stark. Thus, one would think that China has reason to push for stricter disciplines on the use of anti-dumping in the Doha Round negotiations. At the same time, however, as one of the major users of anti-dumping actions in recent years, it also seems to make sense for China to argue that more discretion be given to the investigating authorities. Two other factors further complicate the picture. First, as noted by Messerlin, China is targeted more by developing countries than developed countries, especially if the number of anti-dumping actions is adjusted for trade size. For example, let's say that the EU imposes one anti-dumping measure against a certain dollar amount of imports from China. According to Messerlin's study, India will adopt ten anti-dumping measures while Mexico will adopt sixty such measures (Messerlin 2004: 32). However, for fears of endangering the solidarity among developing countries and undermining the support of China by other developing countries on key political issues such as the Taiwan problem, at least in the eyes of the Chinese leadership, it would not be a good idea for China to openly confront developing countries.

Second, because China is not treated as a market economy in anti-dumping investigations, it does not matter much if the general rules under the Anti-dumping Agreement are improved or not, unless, of course, China argues for the clarification of the rules on the treatment of non-market economies. Acquiring clarification on the latter would be a difficult task for two reasons. First, as very few countries are in the non-market economy club, most WTO Members would not be sympathetic to China's request. Second, even if the relevant rules in the main Anti-dumping Agreement were revised, it is unclear whether or not China would ultimately benefit from this as the China-specific 'non-market economy' provision is regulated by the Accession Protocol, which, legally speaking, is an entirely different agreement to anti-dumping.

As the discussions above have illustrated, China's decision to keep a low profile in the current Round actually makes great sense. Unless there are substantial changes in the factors discussed above, it is unlikely that China will voluntarily assume a leading role in the talks.

2 Multilateral dispute settlement

In contrast to its reticence in WTO negotiations, China has transformed itself from being a reluctant player into an aggressive litigant in WTO dispute settlement activities. Its roles have shifted through three stages, outlined below.

2.1 Rule taker

From the time of its accession, China has taken a cautious approach towards WTO litigation. As a newcomer unfamiliar with WTO legal rules, China put more emphasis on learning them than on winning specific disputes. In an effort to discourage litigation, China usually settled disputes quickly with the complainant once a case was filed or threatened, even if it might have had strong arguments to defend its actions.[21] For example, in a matter concerning value-added tax rebates on integrated circuits, the USA made a request for consultations in March 2004, and the dispute was settled just four months later. The same period also saw China cave in only two months after the EU threatened to bring a formal WTO complaint against China's export quota regime on coke, an essential raw material for the production of steel. The climax of this approach was reached in the Kraft Linerboard case, in which the United States complained of inconsistencies with the Anti-dumping Agreement when MOFCOM imposed anti-dumping duties on US Kraft Linerboard imports in September 2005. On Friday, 6 January 2006, the USA finally threatened with a formal WTO complaint. On the next working day – i.e. Monday, 9 January 2006 – the Chinese government made an announcement to scrap the anti-dumping duties in this case.

2.2 Rule shaker[22]

To build a better understanding of the dispute settlement process, China actively participated as a third party in real WTO cases during the first few years after its accession. From August 2003 to 2006, for example, China joined almost every panel established during the period as a third party. Through its participation as a third party, China gained invaluable understanding of the WTO dispute settlement system and boosted its confidence in participating in the system as a main player. Such enhanced confidence was well illustrated by the remarks of Minister Bo Xilai of MOFCOM in May 2005. When asked whether China would bring complaints in the WTO against the countries that imposed restrictions against textile exports, Minister Bo Xilai responded (Xinhuanet 2005):

[21] For a review of China's approach towards WTO dispute settlement in this period, see Gao 2005.

[22] For a review of China's shift in strategy, see Gao 2007b.

> First, China has the right to resort to WTO dispute settlement mechanism. We should not hesitate to use this right when needed. Second, while bilateral consultation has its own benefits, if each side sticks to its own view, the problem won't be solved as there is no neutral arbiter. Thus, in addition to one-to-one consultations, sometimes it's more effective to have the disputes reviewed in the multilateral setting. Third, the restrictions against Chinese products are inconsistent with WTO rules and discriminatory. We strongly oppose such measures. Of course, it's up to us to decide whether to take any legal action against such measures and when to do so.

Some of the thinking that informed China's more aggressive new strategy in WTO litigation is revealed in the following analysis of Mexico's litigation strategy in the Soft Drinks case (WTO 2006) by Dr Ji Wenhua, an official in charge of dispute settlement activities at China's WTO Mission in Geneva. In the article he published in the July 2006 issue of the *China WTO Tribune*, a monthly journal on trade policy published by MOFCOM and edited by Dr Zhang Xiangchen – then Director-General of the Treaty and Law Department of MOFCOM – Ji noted that Mexico fought an uphill battle in the case brought against it by the USA, but made a good effort defending its case. According to Ji:

> In this case, Mexico's legal position was rather *weak*, but it has made an *unrelenting* effort by raising many arguments which are *tenuous at best* and *fighting a losing battle*.
>
> While we should not publicly *praise* such litigation strategy and attitude, this case still offers us some worthy lessons: under certain circumstances, we should try to employ some strategies, including resorting to *sophistry* and *delay tactics*.
>
> As a respondent, we should try to come up with as many factual and legal arguments as possible. Even if such arguments are mere sophistry, or made for purposes such as creating artificial difficulties for the panel, gaining sympathies, diverting the attention of other parties, or delaying the progress of the case, they are justified so long as they serve to protect our own interest.
>
> (Original emphasis. Original in Chinese. Translated by the author.)

Equipped with this enlightened new attitude towards the WTO dispute settlement mechanism, China has taken a markedly different approach since then. The turning point came in March 2006, when the USA, EU and Canada brought a joint complaint against China in the Auto Parts case (WTO 2009e). The complainants accused China of violating WTO obligations by treating some imported automobile parts as whole-car imports and imposing additional charges equivalent to the difference

between the higher tariff for whole-car imports and the lower tariff applicable to automobile parts. Technically speaking, this is a rather simple case as the illegality of the Chinese measure seems to be quite obvious, especially as China has made specific commitments to impose no more than a 10 per cent tariff on automobile parts imports in its accession package. However, rather than continuing the old practice of settling the disputes privately, China decided not to concede defeat without a good fight. Over the next two and a half years, the case went all the way from the Panel to the Appellate Body until the Appellate Body finally issued its report in December 2008.

The same aggressive approach was taken in several other cases, especially the TRIPS case (WTO 2009d) and the Publications and Audiovisual Products case (WTO 2010b). In both these instances, China tried to shake or even bend the existing rules by aggressively making legal arguments that put its position in a better light. This strategy was reflected not only in the extensive substantive legal arguments China made, but also in its sophisticated use of procedural objections. As all good lawyers know, while procedural matters may seem mundane, they are of no less importance than substantive claims; if used well, they can even save a hopeless case. Judging from its performance in these cases, China has mastered the 'sophistries' very well. In the TRIPS case, for example, China attacked the complainants on such procedural grounds as the admissibility of certain evidence (WTO 2009d: paras. 6.14–6.37) and the correct scope of the measures at issue (WTO 2009d: paras. 7.1–7.19). Similarly, in the Publications case, China's procedural arguments included the failure of the USA to establish a prima facie case (WTO 2010b: paras. 7.458–7.460), the evidentiary standards (WTO 2010b: paras. 7.620–7.632) and the appropriate scope of the Panel's terms of reference (WTO 2010b: para. 7.63).

2.3 Rule maker

As observed above, while China accepted some rather harsh terms as the price for its WTO accession, it will likely be difficult for China to change them through the multilateral negotiation process. This has left the country with only one option: trying to challenge the terms and soften their negative impacts through creative interpretation in WTO dispute settlement proceedings.

Among the five cases filed by China since September 2008, four (US – Anti-Dumping and Countervailing Duties (WTO 2008a); EU – Steel Fasteners (WTO 2009b); US – Tyres (WTO 2009c); and EU – Footwear

(WTO 2010a)) were aimed at changing the rules, especially the provisions in China's Accession Protocol. For example, in the United States – Anti-Dumping and Countervailing Duties case, China challenged the decision by the US authorities to impose both anti-dumping and countervailing duties against several products imported from China. In addition to the usual claims under the GATT, the Anti-dumping (AD) Agreement, and the Subsidies and Countervailing Measures (SCM) Agreements, two claims made by China are particularly interesting. These are described in more detail below.

The first claim is that the United States violated China's Accession Protocol by failing to follow the proper methodology for determining the existence and amount of subsidy benefits. Under Section 15(b) of China's Accession Protocol, in subsidy investigations, other WTO Members could 'use methodologies for identifying and measuring the subsidy benefit, which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks'. Similar to subparagraph (a) of the same Section, which allows other WTO Members to use surrogate prices in anti-dumping investigations against Chinese firms, this provision was introduced to address the concern that prices in China do not reflect the true cost as China is not yet a full market economy. However, unlike the non-market economy (NME) status in anti-dumping investigations, which is scheduled to expire fifteen years after China's accession, the alternative benchmark methodology does not have an expiration date. Thus, theoretically speaking, the alternative benchmark methodology could be invoked even one hundred years after China's accession to the WTO. As discussed above, it would have been very hard for China to change this provision in its accession terms through negotiations in the WTO. Instead, China decided to limit the applicability of the provision by giving teeth to some seemingly innocuous terms in the provision. First, the USA failed to make a finding that there were 'special difficulties' in applying the prevailing terms and conditions in China as the basis for the determination of the existence of benefits. Second, the USA failed to notify the SCM Committee of the methodologies it used. This is a very clever way to reduce the utility of the provision. It remains to be seen how the Panel would rule in this case as it has not issued its report at the time of the completion of this chapter. However, if the Panel chooses to give a strict interpretation of the term 'special difficulties', this might greatly reduce the attractiveness of the provision and even effectively render it void.

The second claim is that the United States violated the relevant provisions in the Anti-dumping and Safeguards Agreements through its dual

application of both anti-dumping and countervailing duties against the same products. The WTO rules on this matter as they currently stand are unclear. While it is possible for the same product to be subject to both anti-dumping and SCM *investigations* at the same time, under GATT Article VI.5, WTO Members are prohibited from the application of both anti-dumping and countervailing duties to the same identical products in the same case, but non-market economies do not receive the same treatment and may be subject to both anti-dumping and countervailing duties. However, this provision also states that the prohibition of dual application only applies to cases of export subsidies and does not include actionable domestic subsidies; thus it is not applicable to the alleged subsidies to Chinese products. On the other hand, one may also argue that to the extent that the dual application leads to overcompensation, this might result in inconsistencies with the 'lesser duty rule' under both the Anti-dumping and SCM Agreements. In summary, therefore, China hopes to clarify or even make new rules through this case. As the expiration date for non-market economy status in anti-dumping investigations draws closer, subsidy investigations will become the main issue facing Chinese firms. Hopefully, through the clarification of these terms in dispute settlement activities, China will be able to change the rules in its favour so that its firms will have an easier time when this issue arises.

Similarly, both the tyres safeguard case against the United States and the two anti-dumping cases against the EU involve claims of violation of the individual clauses authorizing the respective trade remedy measures in China's Accession Protocol. Given that the Panel and Appellate Body have not been particularly fond of trade remedy measures, there is a good chance that the ambiguous terms used in the Accession Protocol will be interpreted in a way that would restrict the utility of these provisions in the future. Should this be the case, China would have effectively changed the rules through the WTO dispute settlement process.

3 Regional trade agreements

Strictly speaking, RTAs exist in their own universe parallel to the multilateral trading system. However, as they cover increasingly more global trade,[23] they have become an important component to global trade

[23] For example, according to Carpenter, more than half of world trade is conducted under the preferential tariff regimes under RTAs rather than the most favoured nation (MFN) regime under the WTO. See Carpenter (2009: 25).

governance. Moreover, for most WTO Members, the WTO and RTAs are two alternative tracks that they will pursue at different times. Thus, in order to have a complete picture of China's position in global trade governance, I will also briefly discuss China's RTA approach here.

While China is now an active player in WTO dispute settlement, it still took more than five years for it to initially 'warm up'. In contrast, China did not waste any time in negotiating RTAs. Starting with the 2002 Free Trade Agreement (FTA) between China and the Association of Southeast Asian Nations (ASEAN), China has been busy negotiating RTAs covering both trade in goods and services. The subsequent years witnessed the signing of two Closer Economic Partnership Arrangements with Hong Kong, China[24] (June 2003) and Macau, China[25] (October 2003), respectively; the FTAs with Chile[26] (November 2005), Pakistan (November 2006), New Zealand (April 2008), Singapore (October 2008), Peru (April 2009), Costa Rica (April 2010); the launch of FTA negotiations with the Gulf Cooperation Council[27] (April 2005), Australia[28] (May 2005), Iceland[29] (April 2008) and Norway[30] (September 2008); and with negotiations soon to begin with the South African Customs Union (SACU).[31]

While political considerations seem to override economic benefits in many of these RTAs, China has also been trying to make new rules through them.[32] These rule-making efforts cover both the structural aspects and the substantive rules of RTAs.

[24] The full text of the Arrangement is available at www.tid.gov.hk/english/cepa/legaltext/cepa_legaltext.html [accessed in November 2010].

[25] The full text of the Arrangement is available at www.http://bo.io.gov.mo/edicoes/en/dse/cepa/ [accessed in November 2010].

[26] The full text of the Agreement is available at: www.direcon.cl/documentos/China2/tlc_chile_china_ing_junio_2006.pdf [accessed in November 2010].

[27] See 'China Completed First Round of FTA Negotiations with Six Gulf States'. Available at http://gjs.mofcom.gov.cn/aarticle/af/ak/200505/20050500088391.html [accessed in November 2010].

[28] Australia–China FTA Negotiations, Subscriber Update, 26 May 2005. Available at: www.dfat.gov.au/geo/china/fta/050526_subscriber_update.html [accessed in November 2010].

[29] See http://fta.mofcom.gov.cn/article/iceland/200809/49_1.html [accessed in November 2010].

[30] See http://fta.mofcom.gov.cn/ article/southafrica/200809/48_1.html [accessed in November 2010].

[31] See http://fta.mofcom.gov.cn/ topic/ensacu.shtml [accessed in November 2010].

[32] For a detailed discussion of China's FTA strategy, see Gao (2008: 55–6).

First, in terms of the structure, China's RTAs tend to have a narrower coverage than those used by other major players, such as the USA, EU or Japan. Normally, China would start with an agreement on trade in goods alone and would expand to services only after commitments on goods have been substantially implemented. Take the FTA with Pakistan, for example. While the liberalization of trade in goods dates back to the signing of the agreement on the Early Harvest Program in April 2005, the agreement on trade in services was only signed in February 2009. Similarly, in the FTA with ASEAN, the agreement on trade in goods was signed in November 2004, while the agreement on services was only signed in January 2007. A reverse example is the FTA negotiation with Australia, which has languished for years partly due to the fact that Australia insists on dealing with services liberalization first, while China wishes to proceed with the usual 'goods and then services' order. With regard to the issues that are not traditionally trade-related, such as environmental protection, competition policy and labour standards, China has been reluctant to include them as part of the FTA package, though recently it has shown some willingness to incorporate them. Nonetheless, in line with its cautious approach, China has largely preferred to address these in stand-alone side agreements or Memorandums of Understanding (MoUs), rather than through FTAs.

Second, with regard to substantive rules, China has insisted on the recognition of its market economy status by potential RTA partners as a precondition for virtually every RTA that it has signed. As mentioned earlier, in its accession package, China has agreed to be treated as a non-market economy. This makes it easier for other countries to find the existence of dumping in anti-dumping investigations against China. Given the structural problems in the WTO decision-making process, it is difficult for China to change its non-market economy status in the multilateral trading system. The remaining option is for China to negotiate with each of its trade partners to recognize China's market economy status. Because it has much more bargaining power at the bilateral/regional level, this strategy seems to be working. As of the end of 2009, seventy-nine economies have recognized the market economy status of China.[33] As such recognition increases, there will be mounting pressures on those who still deem

[33] Online interview with Zhou Xiaoyan, Director-General of the Bureau of Fair Trade, MOFCOM, 31 December 2009. Available at http://gzly.mofcom.gov.cn/website/face/www_face_history.jsp?desc=&p_page=2&sche_no=1515 [accessed in November 2010].

China as a non-market economy to accept its market economy status as an established precedent.

4 What lies ahead?

As we can see from the discussions above, China has gradually emerged on the central stage of the multilateral trading system. Looking to the future, it is very likely that China will become an increasingly active player in global trade governance. At the same time, given its diverse interests, China's degree and style of engagement on different aspects of global trade governance will likely vary.

First, in WTO negotiations, if the Doha Round ever concludes and a new round is launched, we will probably see a more active China at work. This will not only be the result of China's rising economic clout, but will also reflect its growing prowess in international diplomacy. Moreover, China itself will be more willing to participate in new multilateral trade negotiations as by then most of its discriminatory WTO accession provisions will already have expired. Will China's more active participation pose a challenge to the existing power balance in the WTO? Judging from China's past record in the UN and the WTO, it is unlikely that China will propose any sweeping changes to the governing structure of the institution. Instead, China will most likely focus on refining the technical rules that fine-tune the system.

Second, in WTO dispute settlement, we should expect more cases involving China as either respondent or complainant. In part, this will simply continue established patterns in the WTO: over the history of the GATT/WTO, it is rare to find cases where the two largest Members – i.e. the USA and the EU – are not involved in some capacity. It is only natural that we would find China, the next big trader, pursuing and/or receiving the same treatment. On the other hand, as some of the past cases illustrate – such as the audiovisual case, the subsidies case and the ongoing debate on China's currency policy[34] – many of China's trade disputes are not just the old-fashioned clash between the giants that we have seen in disputes between the USA and the EU. Instead, they reflect the inherent tension between the economic and political systems of China and the fundamental principles of the WTO, which were designed by and

[34] For the complicated issues raised by the currency dispute, see e.g. Evenett (2010), especially section 5: Does the crisis-era Renminbi regime violate WTO rules? Is the threat of WTO litigation credible?

for economies that operate in vastly different environments. Will China work to change the existing rules in its favour through the WTO dispute settlement mechanism? This seems unlikely. As illustrated in the previous discussion, while China has been trying to change some of the rules, the focus has been almost exclusively on rules that it finds discriminatory against itself, rather than general WTO rules.

Third, in the short- to medium-term future, we will probably see China's RTA frenzy waning down for several reasons. First, the non-market economy status clause in China's Accession Protocol will expire in 2016, leaving China with no need to reward countries with RTAs just for the sake of recognizing its market economy status. Second, if one looks around, it is evident that most countries that are willing to negotiate RTAs with China have already done so, making it harder to find new candidates. Third, as the recent protests against China in Malaysia and Indonesia[35] have shown, there might be a backlash against China when the RTA commitments kick in. The complicated political consequences of its RTAs, whose full implications remain to be seen, will probably make China more cautious in pursuing future regional agreements.

As history has shown, no international institutions can survive for long without the support of key players. As the biggest emerging power in the world today, China deserves a seat at the big-boys' table. While the other major powers, such as the USA, EU and India, might feel uneasy, they have to realize that recognizing a larger role for China in global trade governance also suits their own interests and those of the multilateral trading system as a whole. While the WTO, unlike its sister institutions, does not have any formal 'high table', it is an open secret that many key decisions are made in informal processes, such as the 'Green Room', which extends invitations only to key players. If China were denied the chance to join in the game that the major powers have been playing, it might well decide to make its own. Of course, one might have doubts as to whether the 'golden straitjacket' of multilateral trade rules, initially made for the medium-sized average WTO Members, could constrain an XXXL-size country like China. But such concerns are probably unwarranted as China has largely been a system maintainer in the WTO. In short, while China's ascent in global trade governance might raise some feelings of uneasiness, the best way to ease such concerns is by greeting it with more mutual understanding and accommodation, rather than reacting with fear and suspicion.

[35] See NAM NEWS NETWORK (2010) and Suwarni (2010).

References

Abbott, F. M. 1998. 'China's Accession to the WTO', *American Society of International Law Insights* January. www.asil.org/insigh13.cfm [Accessed in August 2010].

BBC. 2006. 'IMF Reforms Give China More Power', *BBC News* [online] 18 September. http://news.bbc.co.uk/2/hi/business/5358520.stm [Accessed in August 2010].

Bown, C. 2009. *Self-enforcing Trade: Developing Countries and WTO Dispute Settlement*. Washington, DC: Brookings Institution Press.

Carpenter, T. 2009. 'A Historical Perspective on Regionalism', in Baldwin, R. and Low, P. (eds.) *Multilateralizing Regionalism: Challenges for the Global Trading System*. Cambridge University Press, pp. 13–27.

Cattaneo, O. and Braga, A. P. 2009. *Everything You Always Wanted to Know about WTO Accession (But Were Afraid to Ask)*. Policy Research Working Paper Series 5116. Washington, DC: The World Bank.

Deere, C. 2009. *The Implementation Game: The TRIPS Agreement and the Global Politics of Intellectual Property Reform in Developing Countries*. Oxford University Press.

Ehlermann, C. D. and Ehring, L. 2005. 'Are WTO Decision-Making Procedures Adequate for Making, Revising and Implementing Worldwide and "Plurilateral" Rules?', in Petersmann, E.U. (ed.), *Reforming the World Trading System: Legitimacy, Efficiency, and Democratic Governance*. Oxford University Press, pp. 497–522.

Evenett, S. J. (ed.) 2010. *The US-Sino Currency Dispute: New Insights from Economics, Politics, and Law*. London: Centre for Economic Policy Research (CEPR).

Feinerman, J. V. 1995. 'Chinese Participation in the International Legal Order: Rogue Elephant or Team Player?' *The China Quarterly* 141: 186–210.

Gao, H. 2005. 'Aggressive Legalism: The East Asian Experience and Lessons for China', in Gao, H. and Lewis, D. (eds.), *China's Participation in the WTO*. London: Cameron May, pp. 315–51.

2007a. 'China's Participation in the WTO: A Lawyer's Perspective', *Singapore Year Book of International Law* 11: 41–74.

2007b. 'Taming the Dragon: China's Experience in the WTO Dispute Settlement System', *Legal Issues of Economic Integration* 34(4): 369–92.

2008. 'The RTA Strategy of China: A Critical Visit', in Buckley, R., Lo, V. I. and Boulle, L., *Challenges to Multilateral Trade: The Impact of Bilateral, Preferential and Regional Agreements*. The Netherlands: Kluwer Law International, pp. 55–66.

Khor, M. 2007. 'Trade: China and EU Clash over RAMs at NAMA Meeting', *SUNS* 6362, 9 November. www.twnside.org.sg/title2/wto.info/twninfo110719.htm [Accessed in August 2010].

Lardy, N. R. 1996. *China and the WTO*. Brookings Policy Brief Series #9. Washington, DC: The Brookings Institute.

1999. *China's WTO Membership*. Brookings Policy Brief Series #47, Washington, DC: The Brookings Institute.

2002. *Integrating China into the Global Economy*. Washington, DC: The Brookings Institute.

Mattoo, A. 2003. 'China's Accession to the WTO: The Services Dimension', *Journal of International Economic Law* 6(2): 299–339.

Messerlin, P. 2004. 'China in the WTO: Antidumping and Safeguards', in Bhattasali, D., Li, S. and Martin, W. (eds.) *China and the WTO: Accession, Policy Reform, and Poverty Reduction Strategies*. Washington, DC: World Bank, pp. 29–47.

NAM NEWS NETWORK. 2010. 'Malaysia Government Will Address Concerns over Surge in Imports from China'. 12 February. http://bilaterals.org/spip.php?article16786 [Accessed in November 2010].

Nordström, H. 2002. 'Participation of Developing Countries in the WTO: New Evidence Based on the 2003 Official Records', Sweden: National Board of Trade.

Ostry, S. 1998. 'China and the WTO: The Transparency Issue', *UCLA Journal of International Law and Foreign Affairs* 3(1): 1–22.

2003. 'WTO Membership for China: To Be or Not to Be: Is That the Answer?' in Cass, D. Z., Williams, B. G. and Barker, G. (eds.) *China and the World Trading System: Entering the New Millennium*. Cambridge University Press, pp. 257–65.

Otteman, S. 2008. 'Low-Key Chinese Role in Doha Trade Talks Frustrates U.S., EU', *Inside US-China Trade* 8(1). 2 January.

Qin, J. Y. 2003. '"WTO-Plus" Obligations and Their Implications for the World Trade Organization Legal System: An Appraisal of the China Accession Protocol', *Journal of World Trade* 491: 37(3).

Schwab, S. 2006. *Remarks at the 40th Anniversary Gala Dinner of the National Committee on US–China Relations*. New York, USA. 12 October 2006. www.ncuscr.org/files/2006Gala_SusanSchwab.pdf [Accessed in August 2010].

Shi, G. 2005. 'Working Together for a Better Future Based on Mutual Benefit', in Gao, H. and Lewis, D. (eds.), *China's Participation in the WTO*. London: Cameron May, pp. 15–22.

Shi, M. 2005. 'China's Participation in the Doha Negotiations and Implementation of its Accession Commitments', in Gao, H. and Lewis, D. (eds.), *China's Participation in the WTO*. London: Cameron May, pp. 23–33.

Steinberg, R. 1999. *Institutional Implications of WTO Accession for China*. IGCC Working Paper No. 4. La Jolla: University of California Institute on Global Conflict and Cooperation.

Sun, Z. 2008. *Statement by H.E. Ambassador Sun Zhenyu at the Informal Trade Negotiations Committee Meeting*. 11 August 2008. http://wto2.mofcom.gov.cn/aarticle/inbrief/200808/20080805717988.html [Accessed in August 2010].

Suwarni, Y. 2010. 'Thousands Rally to Demand Delay of ASEAN-China FTA', *Jakarta Post*, 7 January. http://bilaterals.org/spip.php?article16567 [Accessed in November 2010].

Tsogtbaatar, D. 2005. 'Mongolia's WTO Accession: Expectations and Realities of WTO Membership', in Gallagher, P., Low, P. and Stoler, A. L. (eds.) *Managing the Challenges of WTO Participation: 45 Case Studies*. Cambridge University Press, pp. 409–19.

US–China Relations Act of 2000: Pub. L. 106–286, 22 U.S.C. 6901 et seq., 10 October 2000.

World Bank. 2010a. *World Bank Reforms Voting Power, Gets $86 Billion Boost*. [press release], 25 April 2010. http://go.worldbank.org/WDRT2IZSE0 [Accessed in August 2010].

2010b. *World Bank Group Voice Reform: Enhancing Voice and Participation in Developing and Transition Countries in 2010 and Beyond* [online], 25 April 2010. http://siteresources.worldbank.org/NEWS/Resources/IBRD2010VotingPowerRealignmentFINAL.pdf [Accessed in August 2010].

2010c. *World Development Indicators*. Washington, DC: The World Bank.

World Trade Organization (WTO). 1994. *General Agreement on Tariffs and Trade*. Geneva: WTO.

1996. Appellate Body Report, Japan – Taxes on Alcoholic Beverages. WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R. Adopted 1 November 1996, DSR 1996:I, 97. Geneva: WTO.

1999. *The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations*. Geneva: WTO.

2001a. *Report of the Working Party on the Accession of China*. WT/MIN(01)/3. 10 November. Geneva: WTO.

2001b. *Protocol on the Accession of The People's Republic of China*. WT/L/432. 23 November. Geneva: WTO.

2003. *Statement by H.E. Mr Lu Fuyuan, Minister of Commerce of China. At the Ministerial Conference, Fifth Session, Cancún*, WT/MIN(03)/ST/12. 10–14 September. Geneva: WTO.

2005. *Doha Work Programme: Ministerial Declaration*. WT/MIN(05)/DEC. 22 December. Geneva: WTO.

2006. *Panel Report, Mexico – Tax Measures on Soft Drinks and Other Beverages*. WT/DS308/R. Adopted 24 March 2006, as modified by Appellate Body Report WT/DS308/AB/R, DSR 2006. Geneva: WTO.

2008a. *United States–Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*. DS379, Request for Consultations received on 19 September. Geneva: WTO.

2008b. *United States–Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*. DS379. Request for Consultations received on 19 September 2008. Geneva: WTO.

2009a. *Trade Profiles 2009*. Geneva: WTO.

2009b. *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*. DS397. Request for Consultations received on 31 July. Geneva: WTO.

2009c. *United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China*. DS399. Request for Consultations received on 14 September. Geneva: WTO.

2009d. *Panel Report, China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights*. WT/DS362/R. Adopted 20 March 2009. Geneva: WTO.

2009e. *Panel Reports, China – Measures Affecting Imports of Automobile Parts*. WT/DS339/R, WT/DS340/R, WT/DS342/R and Add.1 and Add.2. Adopted 12 January 2009, upheld (WT/DS339/R) and as modified (WT/DS340/R, WT/DS342/R) by Appellate Body Reports WT/DS339/AB/R, WT/DS340/AB/R, WT/DS342/AB/R. Geneva: WTO.

2010a. *European Union – Anti-Dumping Measures on Certain Footwear from China*, DS405, Request for Consultations received on 4 February. Geneva: WTO.

2010b. *Panel Report, China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*. WT/DS363/R and Corr.1. Adopted 19 January 2010, as modified by Appellate Body Report WT/DS363/AB/R. Geneva: WTO.

Xinhuanet. 2005. 'Bo Xilai: Decisions of the EC and US to Impose Restrictions on Chinese Textiles Totally Groundless', *Xinhuanet News* [online] 30 May. http://news.xinhuanet.com/fortune/2005–05/30/content_3022500.htm [Accessed in August 2010].

2010. 'China's Voting Power in World Bank Ascends to Third Place', *Xinhuanet News* [online] 26 April. http://news.xinhuanet.com/english2010/china/2010–04/26/c_13266890.htm [Accessed in August 2010].

Zhang, X. 2008. 'Wuzi lide Daxiang (Elephant in the Room)', *China WTO Tribune* 7.